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**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues
Against:

JEREMY ROBERT MILLER

Respondent.

Case No. 2013-2

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about July 2, 2012, Complainant Louise R. Bailey, M.Ed., RN, in her official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, filed Statement of Issues No. 2013-2 against Jeremy Robert Miller (Respondent) before the Board of Registered Nursing.

2. On or about November 8, 2011, Respondent filed an application dated November 3, 2011 with the Board of Registered Nursing to obtain a Registered Nurse License.

3. On or about December 30, 2011, the Board issued a letter denying Respondent's application for a Registered Nurse License. On or about January 18, 2012, Respondent appealed the Board's denial of his application.

4. On or about July 3, 2012, Respondent was served by Certified and First Class Mail copies of the Statement of Issues No. 2013-2, Statement to Respondent, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) to Respondent's address on the application form. The Statement of Issues is attached as Exhibit A, and is incorporated herein by reference.

1 5. Service of the Statement of Issues was effective as a matter of law under the
2 provisions of Government Code section 11505, subdivision (c) and/or Business & Professions
3 Code section 124.

4 6. On or about August 7, 2012, Respondent filed a Notice of Withdrawal of Request for
5 Hearing.

6 7. Business and Professions Code section 118 states, in pertinent part:

7 (a) The withdrawal of an application for a license after it has been filed with a
8 board in the department shall not, unless the board has consented in writing to such
9 withdrawal, deprive the board of its authority to institute or continue a proceeding
against the applicant for the denial of the license upon any ground provided by law or
to enter an order denying the license upon any such ground.

10 8. Government Code section 11506 states, in pertinent part:

11 (c) The respondent shall be entitled to a hearing on the merits if the respondent
12 files a notice of defense, and the notice shall be deemed a specific denial of all parts
13 of the accusation not expressly admitted. Failure to file a notice of defense shall
constitute a waiver of respondent's right to a hearing, but the agency in its discretion
may nevertheless grant a hearing.

14 9. California Government Code section 11520 states, in pertinent part:

15 (a) If the respondent either fails to file a notice of defense or to appear at the
16 hearing, the agency may take action based upon the respondent's express admissions
17 or upon other evidence and affidavits may be used as evidence without any notice to
18 respondent; and where the burden of proof is on the respondent to establish that the
respondent is entitled to the agency action sought, the agency may act without taking
evidence.

19 10. Pursuant to its authority under Government Code section 11520, the Board finds
20 Respondent is in default. The Board will take action without further hearing based upon the
21 allegations set forth in the Statement of Issues No. 2013-2, as well as Respondent's withdrawal of
22 his appeal of the denial of his application.

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DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Jeremy Miller has subjected his application for a Registered Nurse License to denial.

2. Service of Statement of Issues No. 2013-2 and related documents was proper and in accordance with the law.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Registered Nursing is authorized to deny Respondent's application for licensure based upon the following violations alleged in the Statement of Issues:

a. Respondent's application is subject to denial under sections 480, subdivisions (a)(1) and (a)(3)(B) of the Code in that on or about November 28, 2006, in a criminal proceeding entitled *The People of the State of California vs. Jeremy Robert Miller*, in Orange County Superior Court, Case Number 06CM10677, Respondent was convicted on his plea of guilty of violating Vehicle Code (VC) section 23152, subdivision (a), driving under the influence of alcohol (DUI), a misdemeanor, with an enhancement under VC section 23578, for having a Blood Alcohol Concentration (BAC) greater than .15 percent, a crime substantially related to the qualifications, duties, and functions of a registered nurse. Said conviction would be a ground for discipline under section 2761, subdivision (f) of the Code for a licensed registered nurse;

b. Respondent's application is subject to denial under Code section 480, subdivisions (a)(1) and (a)(3)(B) of the Code in that On or about July 6, 2007, in a criminal proceeding entitled *The People of the State of California vs. Jeremy Robert Miller*, in Orange County Superior Court, Case Number 07CM07194, Respondent was convicted on his plea of guilty of violating VC section 23152, subdivision (a), driving under the influence of alcohol (DUI), and VC section 23152, subdivision (b), driving with a BAC over .08 percent, misdemeanors, with an enhancement under VC section 23538, subdivision (b)(2), for having a BAC greater than .20 percent or more, a crime substantially related to the qualifications, duties, and functions of a registered nurse. Said conviction would be a ground for discipline under section 2761, subdivision (f) of the Code for a licensed registered nurse;

1 c. Respondent's application is subject to denial under sections 480, subdivision
2 (a)(3)(A) of the Code in that on or about August 24, 2006 and May 4, 2007, Respondent used
3 alcoholic beverages to an extent or in a manner that was dangerous and injurious to himself and
4 the public when he operated a motor vehicle while under the influence of alcohol, conduct that
5 would be a ground for discipline under section 2762, subdivision (b) of the Code for a licensed
6 registered nurse.

7 d. Respondent's application is subject to denial under Code section 480,
8 subdivision (a)(3)(A) in that on or about November 28, 2006 and July 6, 2007, Respondent was
9 convicted of criminal offenses involving the consumption of alcohol, conduct that would subject
10 a licensed registered nurse to discipline under Code sections 2762, subdivision (c), and 2761,
11 subdivision (f).

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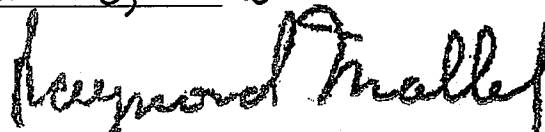
ORDER

IT IS SO ORDERED that the application for Registered Nurse License, filed by Respondent Jeremy Robert Miller, is denied.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on January 11, 2013.

It is so ORDERED December 13, 2012.



FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

Attachment:
Exhibit A: Statement of Issues

70608809.DOC
DOJ Matter ID: SD2012703054

Exhibit A

Statement of Issues

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Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:
13 **JEREMY ROBERT MILLER**
14 **Registered Nurse License Applicant**
Respondent.

Case No. 2013-2

STATEMENT OF ISSUES

15
16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely
19 in her official capacity as the Interim Executive Officer of the Board of Registered Nursing,
20 Department of Consumer Affairs.

21 2. On or about November 8, 2011, the Board of Registered Nursing, Department of
22 Consumer Affairs received an application for a Registered Nurse License from Jeremy Robert
23 Miller (Respondent). On or about November 3, 2011, Jeremy Robert Miller certified under
24 penalty of perjury to the truthfulness of all statements, answers, and representations in the
25 application. The Board denied the application on December 30, 2011.

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JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of *nolo contendere*. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

1 (2) Done any act involving dishonesty, fraud, or deceit with the
2 intent to substantially benefit himself or herself or another, or substantially injure
another.

3 (3) (A) Done any act that if done by a licentiate of the business or
4 profession in question, would be grounds for suspension or revocation of license.

5 (B) The board may deny a license pursuant to this subdivision
6 only if the crime or act is substantially related to the qualifications, functions, or
duties of the business or profession for which application is made.

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8 7. Section 482 of the Code states:

9 Each board under the provisions of this code shall develop criteria to
10 evaluate the rehabilitation of a person when:

11 (a) Considering the denial of a license by the board under Section
480; or

12 (b) Considering suspension or revocation of a license under
Section 490.

13 Each board shall take into account all competent evidence of rehabilitation
14 furnished by the applicant or licensee.

15 8. Section 493 of the Code states:

16 Notwithstanding any other provision of law, in a proceeding conducted by
17 a board within the department pursuant to law to deny an application for a license
or to suspend or revoke a license or otherwise take disciplinary action against a
18 person who holds a license, upon the ground that the applicant or the licensee has
been convicted of a crime substantially related to the qualifications, functions, and
19 duties of the licensee in question, the record of conviction of the crime shall be
conclusive evidence of the fact that the conviction occurred, but only of that fact,
20 and the board may inquire into the circumstances surrounding the commission of
the crime in order to fix the degree of discipline or to determine if the conviction
21 is substantially related to the qualifications, functions, and duties of the licensee in
question.

22 As used in this section, "license" includes "certificate," "permit,"
23 "authority," and "registration."

24 9. Section 2761 of the Code states:

25 The board may take disciplinary action against a certified or licensed
26 nurse or deny an application for a certificate or license for any of the following:

27 (a) Unprofessional conduct, which includes, but is not limited to,
the following:

28

1 (f) Conviction of a felony or of any offense substantially related to
2 the qualifications, functions, and duties of a registered nurse, in which event the
3 record of the conviction shall be conclusive evidence thereof.

4 10. Section 2762 of the Code states:

5 In addition to other acts constituting unprofessional conduct within the
6 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct
7 for a person licensed under this chapter to do any of the following:

8 (a) Obtain or possess in violation of law, or prescribe, or except as
9 directed by a licensed physician and surgeon, dentist, or podiatrist administer to
10 himself or herself, or furnish or administer to another, any controlled substance as
11 defined in Division 10 (commencing with Section 11000) of the Health and
12 Safety Code or any dangerous drug or dangerous device as defined in Section
13 4022.

14 (b) Use any controlled substance as defined in Division 10 (commencing
15 with Section 11000) of the Health and Safety Code, or any dangerous drug or
16 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent
17 or in a manner dangerous or injurious to himself or herself, any other person, or
18 the public or to the extent that such use impairs his or her ability to conduct with
19 safety to the public the practice authorized by his or her license.

20 (c) Be convicted of a criminal offense involving the prescription,
21 consumption, or self-administration of any of the substances described in
22 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
23 record pertaining to, the substances described in subdivision (a) of this section, in
24 which event the record of the conviction is conclusive evidence thereof.

25 REGULATORY PROVISIONS

26 11. California Code of Regulations, title 16, section 1444 states:

27 A conviction or act shall be considered to be substantially related to the
28 qualifications, functions or duties of a registered nurse if to a substantial degree it
evidences the present or potential unfitness of a registered nurse to practice in
manner consistent with the public health, safety, or welfare. Such convictions or
acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those
violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to
Section 290 of the Penal Code.

12. California Code of Regulations, title 16, section 1445 states:

(a) When considering the denial of a license under Section 480 of the code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

....

FIRST CAUSE FOR DENIAL OF APPLICATION

(Nov. 28, 2006 Criminal Conviction for Driving Under the Influence on Aug. 24, 2006)

13. Respondent's application is subject to denial under Code section 480, subdivisions (a)(1) and (a)(3)(B) in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a registered nurse, which would be grounds for discipline for a registered nurse under Code section 2761, subdivision (f). The circumstances are as follows:

a. On or about November 28, 2006, in a criminal proceeding entitled *The People of the State of California vs. Jeremy Robert Miller*, in Orange County Superior Court, Case Number 06CM10677, Respondent was convicted on his plea of guilty of violating Vehicle Code (VC) section 23152, subdivision (a), driving under the influence of alcohol (DUI), a misdemeanor, with an enhancement under VC section 23578, for having a Blood Alcohol Concentration (BAC) greater than .15 percent. An additional charge for violation of VC section 23152, subdivision (b), driving with a BAC over .08 percent, a misdemeanor, with an enhancement under VC section 23578, for having a BAC greater than .15 percent, was dismissed as a result of a plea bargain.

1 b. As a result of the conviction, on or about November 28, 2006, Respondent
2 was sentenced to three years informal probation and ordered to pay \$1,610.50 in fines, fees, and
3 restitution. Respondent was also ordered to enroll in and complete a six-month Level 2 First
4 Offender Alcohol Program, the Mothers Against Drunk Driving (MADD) Victim's Impact Panel
5 Program, and a Youthful Drug and Alcohol deterrence program. On or about June 22, 2007,
6 Respondent's probation was revoked following a DUI arrest on May 4, 2007. On or about July 6,
7 2007, Respondent was found to be in violation of probation. As a result of the violation,
8 Respondent's informal probation was re-activated and he was ordered to enroll in and complete
9 an 18-month Multiple Offender Alcohol Program to run concurrent with the sentence in Case
10 Number 07CM07194, as detailed in paragraph 14, below.

11 c. The facts that led to the conviction are that on or about August 24, 2006,
12 Respondent was found passed out in the driver seat of a stopped vehicle, in neutral with its
13 engine running and headlights and radio on, blocking a roadway and driveway in Santa Ana,
14 California. A responding deputy from the Orange County Sheriff's Department contacted
15 Respondent and noticed a strong odor of alcohol and it took him several attempts to wake
16 Respondent. Respondent's speech was slurred, he swayed, and his eyes lacked smooth pursuit.
17 Respondent had difficulty following instructions and performed poorly in the field sobriety tests.
18 Two blood tests were conducted following Respondent's arrest with results of .191 percent and
19 .192 percent BAC.

20 **SECOND CAUSE FOR DENIAL OF APPLICATION**

21 **(July 6, 2007 Criminal Convictions for DUI on May 4, 2007)**

22 14. Respondent's application is subject to denial under Code section 480,
23 subdivisions (a)(1) and (a)(3)(B) in that he was convicted of crimes that are substantially related
24 to the qualifications, duties, and functions of a registered nurse, which would be grounds for
25 discipline for a registered nurse under Code section 2761, subdivision (f). The circumstances are
26 as follows:

27 a. On or about July 6, 2007, in a criminal proceeding entitled *The People of*
28 *the State of California vs. Jeremy Robert Miller*, in Orange County Superior Court, Case Number

1 07CM07194, Respondent was convicted on his plea of guilty of violating VC section 23152,
2 subdivision (a), driving under the influence of alcohol (DUI), and VC section 23152, subdivision
3 (b), driving with a BAC over .08 percent, misdemeanors, with an enhancement under VC section
4 23538, subdivision (b)(2), for having a BAC greater than .20 percent or more.

5 b. As a result of the convictions, Respondent was sentenced to informal
6 probation for five years and ordered to serve 60 days at the Theo Lacy Jail. Respondent was also
7 ordered to attend and successfully complete a MADD Victim's Impact Panel program and an 18-
8 month Multiple Offender Alcohol Program to run concurrent with the alcohol program in case
9 number 06CM10677, detailed in paragraph 13, above. Respondent was also ordered to pay
10 \$1,645.50 in fines, fees, and restitution.

11 c. The facts that led to the convictions are that on or about May 4, 2007,
12 Respondent was reported as a possible drunk driver because the car he drove was weaving on a
13 roadway in Orange, California. A responding officer from Orange Police Department (OPD)
14 found Respondent passed out in the driver seat of a parked vehicle, in neutral with the engine
15 running. As the responding Officer opened the unlocked driver's side door to check on the
16 driver, the Officer immediately smelled alcohol coming from the driver, later identified through
17 a driver's license as Respondent. Respondent had bloodshot and watery eyes, slurred speech, and
18 an unsteady gait. After being sure that Respondent did not need medical attention but was instead
19 displaying objective symptoms of a person under influence of alcohol, the Officer demonstrated
20 and administered a series of field sobriety tests. Respondent performed poorly, was arrested for
21 DUI, and was transported to OPD. A breath test was administered, which returned results of .23
22 percent BAC on two attempts.

23 **THIRD CAUSE FOR DENIAL OF APPLICATION**

24 **(Act If Done By Licentiate - Dangerous Use Of Alcohol)**

25 15. Respondent's application is subject to denial under Code section 480, subdivision
26 (a)(3)(A) in that on or about August 24, 2006 and May 4, 2007, Respondent used alcoholic
27 beverages to an extent or in a manner that was dangerous and injurious to himself and the public
28 when he operated a motor vehicle while under the influence of alcohol, as detailed in paragraphs

1 13 and 14, above, which subjects a licensed registered nurse to discipline under Code section
2 2762, subdivision (b).

3 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

4 **(Act If Done By Licentiate - Conviction Of Alcohol-Related Offenses)**

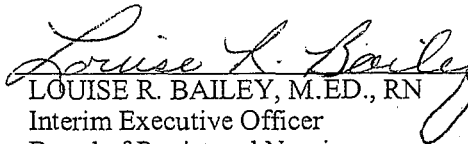
5 16. Respondent's application is subject to denial under Code section 480, subdivision
6 (a)(3)(A) in that on or about November 28, 2006 and July 6, 2007, Respondent was convicted of
7 criminal offenses involving the consumption of alcohol as detailed in paragraphs 13 and 14,
8 above, which subjects a licensed registered nurse to discipline under Code sections 2762,
9 subdivision (c), and 2761, subdivision (f).

10 **PRAYER**

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein
12 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 13 1. Denying the application of Jeremy Robert Miller for a Registered Nurse License;
14 2. Taking such other and further action as deemed necessary and proper.

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17 DATED: July 2, 2012


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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